

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Darien Telephone Company, Inc.,	)	
Inc., Logan Telephone Cooperative, Inc., and	)	
Roanoke & Botetourt Telephone Company	)	CC Docket No. 96-45
	)	
Request for Review of the Decision for the	)	
Universal Service Administrative Company	)	
Decision Regarding Safety Net Additive Support	)	
Advocates' Petition for Declaratory Ruling	)	
Regarding Truth-in-Billing	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
And  
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL  
TELECOMMUNICATIONS COMPANIES  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (collectively, the Associations)<sup>1</sup> submit these comments in response to the Public Notice in the above-captioned proceeding.<sup>2</sup> The Associations support the petitioners request for review and reversal of the Universal Service Administrative Company (USAC) decision to recalculate retroactively safety net additive (SNA) support received by the petitioners and require the petitioners to refund SNA support to USAC. The Associations specifically request that the Federal Communications Commission (Commission or FCC) apply its most recent January 14, 2005 interpretation of the proper calculation of SNA support on a prospective basis only.

---

<sup>1</sup> The Associations are membership organizations that collectively represent the majority of independent rural incumbent local exchange carriers (ILECs). Independent rural ILEC provide service to approximately 40 percent of the geographic area of the United States.

## I. INTRODUCTION

The Commission's safety net additive rule (SNA rule) went into effect in 2001.<sup>3</sup> The record in this proceeding indicates that nearly two years later USAC believed that there was more than one reasonable method to calculate SNA support for eligible telecommunications carriers (ETCs) pursuant to the SNA rule.<sup>4</sup> In USAC's letter to the FCC dated November 23, 2003, USAC specifically requested that the Commission provide guidance on which alternative SNA support calculation scenario USAC should apply when determining SNA support for ETCs.<sup>5</sup> On January 14, 2005, the Commission responded to USAC's letter and notified USAC that "SNA support should be based on the amount calculated for the first qualifying year, as described in USAC's Scenario #1."<sup>6</sup> Notably, the Commission's letter did not instruct USAC to apply the Scenario #1 SNA support calculation on a retroactive basis. On March 2, 2005, however, USAC sent letters to the petitioners informing them that based on the Commission's January 14, 2005 letter, USAC has recalculated each company's SNA support on a retroactive and prospective basis.<sup>7</sup>

USAC's recalculation of SNA support on a retroactive basis has forced several rural ILECs to refund SNA support they received. This support was used for the maintenance and upgrade of these carriers' networks and has enabled rural and high-cost customers to receive

---

<sup>2</sup> In the Matter of Darien Telephone Company, Inc., Logan Telephone Cooperative Inc., and Roanoke & Botetout Telephone Company Request for Review of the Universal Service Administrative Company's Decision's Regarding Safety Net Additive Support, CC Docket 96-45, DA 05-1953 (Public Notice)(rel. July 6, 2005).

<sup>3</sup> In the Matter of the Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for the Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers, 14<sup>th</sup> Report and Order, 22<sup>nd</sup> Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket 96-45, and Report and Order in CC Docket 00-256, 16 FCC RCD 11244, 11276-11281, ¶¶ 77-90 (20001) (Rural Task Force Order); also see 47 C.F.R. § 36.605 (SNA rule).

<sup>4</sup> See, reference to a USAC's November 24, 2003 Letter Memorandum contained in the FCC Letter from Jeffrey J. Carlise, Chief, Wireline Competition Bureau to Irene Flannery, USAC, High-Cost Low Income Division, dated January 14, 2005.

<sup>5</sup> Id.

<sup>6</sup> FCC Letter from Jeffrey J. Carlise, Chief, Wireline Competition Bureau to Irene Flannery, USAC, High-Cost Low Income Division, dated January 14, 2005, referencing USAC's November 24, 2003 Letter Memorandum p. 2.

affordable telecommunications and advanced services. When USAC sought FCC guidance in 2003, neither USAC nor the FCC provided public notice that USAC's calculation of SNA support may be subject to an interpretation of the FCC's Wireline Competition Bureau and that based on this interpretation SNA support refunds may be required. Carriers and other interested parties were not provided the opportunity to comment or submit evidence concerning the proper calculation of SNA support and whether that calculation should be applied on a prospective and/or retroactive basis.<sup>8</sup> The Associations therefore urge that the Commission review and reverse USAC's decision to recalculate SNA support retroactively, require USAC to redistribute SNA support refunded to USAC by the petitioners and other carriers, and require USAC to calculate SNA support using the Commission's January 14<sup>th</sup> revised formula on a prospective basis only.

## **II. THE COMMISSION'S JANUARY 14, 2005 SAFETY NET ADDITIVE CALCULATION SHOULD BE APPLIED ON A PROSPECTIVE BASIS ONLY**

The Commission should instruct USAC to apply the FCC's January 14, 2005 revised calculation of SNA support to eligible carriers on a prospective basis only. USAC reasonably interpreted the SNA rule when calculating the SNA support for eligible carriers prior to the Commission's January 14<sup>th</sup> letter. Given that USAC's previous interpretation of the rule and calculation of SNA support was reasonable, eligible carriers should not be punished through the application of the FCC's revised SNA support calculation retroactively.

---

<sup>7</sup> See Letter from Karen Majcher, Director, USAC High-Cost Support Mechanism to Kimberly Miles, Logan Telephone Cooperative, Inc., dated March 2, 2005.

<sup>8</sup> The lack of public notice about the fact that USAC was seeking an FCC interpretation of the SNA rule is inconsistent with Commission open public proceedings and may violate the Administrative Procedure Act (APA), 5 U.S.C. §533. Interpretations of FCC rules that have a significant financial impact on small carriers should be conducted in public and all interest parties should have the opportunity to comment. The Commission should avoid changing rules without adequate due process. By reversing USAC's decision requiring retroactive SNA refunds, the Commission will instill confidence in the High-Cost program and reestablish the predictability of universal service support as required by Section 254 of the Communications Act of 1934, as amended (Act).

The Commission has recently determined that when an existing rule or statute has more than one reasonable interpretation, the Commission can hold a previous interpretation lawful on a retroactive basis and also hold the previous interpretation unlawful on a prospective basis.<sup>9</sup> In the *T-Mobile Decision*, the Commission held that state approved ILEC wireless termination tariffs were lawful prior to the effective date of the *T-Mobile Decision*, April 29, 2005, and unlawful on a prospective basis.<sup>10</sup> In the *T-Mobile Decision*, the Commission reasoned that because its existing rules did not explicitly preclude ILECs from filing state wireless termination tariffs, state wireless termination tariffs in effect for several years prior to April 29, 2005 were lawful and wireless carriers are obligated to accept and pay the tariff rates.<sup>11</sup>

The Commission should make a similar finding in this proceeding. USAC's pre-January 14, 2005 interpretation of the SNA rule was reasonable. The Commission's January 14, 2005 letter to USAC does not explicitly preclude USAC from using its previous interpretation of the SNA rule in determining amounts of SNA support distributed to ETCs. USAC's previous calculation of SNA support should therefore remain in effect up until January 14, 2005 and the Commission should instruct USAC to calculate SNA support based on its revised interpretation of the SNA rule on a going forward basis only.

---

<sup>9</sup> In the Matter of Developing a Unified Inter-carrier Compensation Regime, T-Mobile *et al*, Petition for Declaratory Ruling, Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket 01-92, 20 FCC Rcd 4855, 4860, ¶¶ 9-10 (2005) (T-Mobile Decision).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

### III. CONCLUSION

Based on the above stated reasons, the Associations urge that the Commission review and reverse USAC's decision to recalculate SNA support retroactively, require USAC to redistribute SNA support refunded to USAC by the petitioners and other carriers, and require USAC to calculate SNA support using the Commission's January 14, 2005 formula on a prospective basis only.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

By: /s/ Daniel Mitchell  
Daniel Mitchell  
Vice President, Legal and Industry Division  
(703) 351-2016

Its Attorneys

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203  
(703) 351-2000

THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS  
COMPANIES

By: /s/ Stuart Polikoff  
Stuart Polikoff  
Director of Government Relations

21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036  
(202) 659-5990

## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies in CC Docket No. 96-45, was served on this 5th day of August 2005 by electronic mail to the following persons.

/s/ Gail Malloy

Gail Malloy

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A201  
Washington, D.C. 20554  
[Kevin.Martin@fcc.gov](mailto:Kevin.Martin@fcc.gov)

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B115  
Washington, D.C. 20554  
[Kathleen.Abernathy@fcc.gov](mailto:Kathleen.Abernathy@fcc.gov)

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A302  
Washington, D.C. 20554  
[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)

Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-C302  
Washington, D.C. 20554  
[Jonathan.Adelstein@fcc.gov](mailto:Jonathan.Adelstein@fcc.gov)

Best Copy and Printing, Inc.  
445 12th Street, SW  
Room CY-B402  
Washington, D.C. 20554  
[fcc@bcpiweb.com](mailto:fcc@bcpiweb.com)